

THE WEEKLY CLARION

E XXIX.

JACKSON, MISSISSIPPI, THURSDAY MORNING, OCTOBER 4, 1866.

N.Y.

CLARION.

POWER & CO.

TORS AND PROPRIETORS.

City and State.

Publication of the States.

MISS.

BY TELEGRAPH.

REPORTED EXPRESSLY FOR THE CLARION

NEW YORK, Sept. 29.—Cotton misstated; no sales. Flour firm. Wheat 2@3c. better. Pork firmer, at \$3@36. Lard heavy. Gold 1464. Sterling—more doing, at \$1 for sixty days.

The following has been received by the cable. The Newfoundland lines have been prostrated by heavy gales, and after receiving the following short report the operators report them again out of order:

MANCHESTER, Sept. 29.—A great meeting of the friends of the reform movement is being held here to-day. Bright will be among the speakers.

FLORENCE, Sept. 24.—The band of rebels who have been rioting near Palermo for the past few days have been routed by the military.

LONDON, Sept. 24.—Money market easier. Consols 91; fives 71.

LIVERPOOL, Sept. 24.—Cotton materially declined. Middling uplands opened at 12@12. Market active. To-day's sales, 16,000 bales. Broadstuffs generally without change. Corn advanced; mixed Western 28s.

NEW YORK, Sept. 29.—The Herald says that Gen. Santa Anna has located his headquarters on Staten Island, and has opened a regular business bureau for the transaction of matters looking to the delivery of Mexico from French authority. He is said to be constantly engaged with various people on that subject, and has enlisted the sympathies of the Fenian Brotherhood. The leaders are educating the Irish to that belief. It is reported that Santa Anna will soon return to St. Thomas.

NEW ORLEANS, Sept. 29.—Cotton stiffer low middling 35@36c. Receipts 1,600 bales Sterling 56; New York exchange 1@ discount.

Freights to New York, 1@; to Liverpool, 9@16 and 1@; to Havre, 1@. Sugar-fair, 13c. Mlasses-Cuba, 55@60c. Corn-mixed, 83@85c. white, 90c. Flour-superfine, \$11. Oats, 52@53c. Hay, 87@88. Pork, \$35. Bacon shoulders, 18c. Ribbed sides, 22c. Lard, nominal; by the tierce, 21c; by the keg, 22c. Tobacco, \$8@10. Whisky, \$2 30. Gold, 145.

The deaths from yellow fever for the forty-eight hours ending this morning amounted to seven.

LONDON, September 25.—The presence of three United States vessels of war at Candia attracts attention.

Consols, 91. Fives, 71.

BERLIN, September 25.—Bismarck continues ill. There are fears he may not recover. It is said that Spain accepts the good offices of England and France as mediators between herself, Chili and Peru.

LIVERPOOL, Sept. 26.—Cotton has advanced 1d. Sales 20,000 bales. Middling uplands 13c. Broadstuffs firmer.

SOUTHAMPTON, Sept. 25.—The steamer Teutonia sailed to-day for New York with two million francs in gold. The steamer Bremen also sailed with £142,000 in gold.

LONDON, September 26.—More troops are to go to Canada. The steamer Henry is engaged to take a thousand.

NEW YORK, September 29.—Cotton active. 4,000 bales upland sold at 39c; Orleans, 41c. Flour firm. Wheat more active.

Six steamers sailed to-day for Europe. The City of London and Fulton took \$250,000 in gold.

PHILADELPHIA, Sept. 29.—Charles Alexander, one of the oldest journalists in the country, and an extensive publisher, died this morning.

ST. LOUIS, Sept. 29.—Geo. Hall was yesterday nominated for Congress by the Conservatives of the Seventh Congressional District.

NEW YORK, Oct. 1.—Gold closed at 47@ under rumors of a heavy decline in bonds on London.

Gen. Dix took formal possession of the naval office this morning. George H. Goddard of a confederate vigilance committee of Arkansas, was arrested to-day at the instance of William Newman, a Union man, who is property at Camden, Ark., was seized in 1861, and turned over to the Confederate government. Goddard's bail is fixed at \$50,000 dollars.

Cotton active and advancing—50,000 bales upland sold at 42 to 43. Orleans 44 to 45—Flour and wheat higher.

A subordinate government official, name not known, has been arrested on a charge of losing \$800 in coin, the property of the government, at gambling.

WASHINGTON, Oct. 1.—Maj. Gen. Wm. W. Howell has been appointed Consul General to the British North American Provinces to reside at Montreal. Maj. Gen. Morgan L. Clegg, of Missouri, has been appointed Consul at Honolulu, Sanwich Islands, in place of Carrollton.

Brig. Gen. W. L. Duff, of Illinois, who was Chief of Artillery on Gen. Grant's staff, has been appointed Consul to Glasgow, in place of Bagley, recalled.

A delegation representing Union men of Alexandria, Va., called on the President to-day and presented a series of resolutions touching the political questions of the day, adopted at a recent Conservative mass meeting held at Alexandria. The President made no speech beyond expressing thanks for the respect shown him, and reiterating his determination to stand by the principles which have heretofore governed his administration.

NEW ORLEANS, Oct. 1.—Seven deaths from yellow fever and thirty from cholera during the past 48 hours.

Cotton advanced 1@c. Sales 2400 bales quotations nominal. Receipts 1229 bales. New York exchange 1@ discount. Sterling 57.

WASHINGTON, Oct. 1.—The special to the New York Herald says that in consequence

DECISIONS OF THE HIGH COURT

OF ERRORS AND APPEALS.
AT THE APRIL TERM, 1866.

Reported Expressly for the Clarion.

Hatch Whitfield
10,220 vs
Margaret Whitfield,
Administratrix.

OPINION OF THE COURT DELIVERED BY HON. W. L. HARRIS.

The defendant in error filed his action of detinue in the court below to recover the possession of personal property, alleged to belong to the estate of his intestate, and to be in the possession of the plaintiff in error. There was a verdict for the defendant in error, on the issue joined, a motion for a new trial, and bill of exceptions, on the refusal thereof, and the cause is brought to this court by writ of error.

Numerous errors are assigned which we will notice in their order.

The first is, that the court erred in permitting the witness, Cason, to testify as to the value of the property in controversy.

The record does not show that Cason testified as to the value of the property in controversy, upon the description of the property, communicated to him by witness, so far as the record includes, he testified as of his own knowledge. There seems to be no ground therefore for this assignment.

The second cause of error is, that the court permitted the witness, Cason, to prove the value of the property, at the time of taking, instead of at the time of trial.

The question for our consideration on this assignment is, what is the rule of damages in actions of detinue, the value at the time of taking or conversion, or the value at the time of trial, or the highest value at any intermediate time?

It is to be observed that as to the measure of damages there is a strong tendency, by legislative action, as well as judicial decisions, to abolish the distinctions resulting from the form of action invented to recover the possession of personal property or damages for infringement on detention, or wrongful appropriation, or for breach of contract, in relation thereto, and to adopt general rules upon the subject of damages susceptible of universal applications. Hence the text writers as well as the late decisions in discussing this rule of damages, seem to disregard the form of action.

Whether trover, detinue, trespass, or replevin, and to agree, no matter what the form of remedy that the plaintiff, when the property is not retained upon proof of his right, is entitled to recover full compensation, or indemnity, the court will not stay proceedings on delivery of the thing sued for and costs.

And so it was held in an anonymous case.

In 1st Strange, R. P. 142, where it is said:

"In trover for money, the court gave leave to bring the whole money declared for into court."

But they could do it only in this case, and not in trover for goods.

Cooke v. Hodges, Hatch, p. 291, and Rayden v. Battis id p. 284, are cited in a note to the case of Whittier and wife, Fuller, to the same point—2d W. Black, R. p. 364.

In the case of Mercer vs. J. D. and Camp, 1d. Elsenberry, applied this rule, of the value at the time of conversion and interest on an action of trover for bills of exchange. But in Greening vs. Wilkinson, 1 Cow. and Payne, p. 625, where trover was brought for E. India Co., warrants for cotton, which had risen in value from six pence per pound at the time of conversion to ten pence half-penny. Abbott C. J. (J. Tenterden) pronounced the case of Mercer vs. Jones, "hardly having regard to the amount of damage for the right to property, as the price of the goods sold for is not limited to the nature of the thing."

Mr. Parsons, in the 2d vol. of his works on contracts, 5th edit, p. 206, says: "We have considered a similar question—whether to take repeatedly, because different principles have been applied to it in different actions. But we doubt if this be wise or just. If we adhere to the simple rule of compensation, we should say that, in every action to recover damages for the wrongful detention of personal property, the plaintiff should receive full compensation for the loss of all that he may have fairly gained during the whole period of the defendant's misappropriation; and the defendant should be compelled to have made the wrongful act as profitable to himself, as the market at any time permitted, excepting, perhaps, accidental and momentary inflations, and should be compelled to give over this profit to the plaintiff. And it will be seen, in our notes that we have recent authority for this general rule,—citing Sudyan vs. Jenkins, 3d Sandf. R. p. 614; and Dunlop vs. Higgins, 1 H. Lds. Com. 381, 463, and Dunlop vs. Lt. Cottenham, 1d. Elsenberry, in a note to the case above quoted.

In the case of Sudyan vs. Jenkins, J. Duer says that the principles, which are manifest, just and universal in their application, are the owner's, to whom compensation is due, and must be fully indemnified, and that the wrong-doer must be permitted to derive any benefit or advantage whatever from his wrongful act."

As the actual loss to the owner is the same, whatever may be the form of the action in which representation is sought, the sum due to him for its compensation must be the same, whether he is the plaintiff in the trespass, or trover, or the defendant in replevin.

If we adhere to the simple rule of compensation, we should say that, in every action to recover damages for the wrongful detention of personal property, the plaintiff should completely indemnify the plaintiff for the breach of the engagement.

The proof in this case showed that at the time of trial, the stock was greatly enhanced in value, and it was held that indemnity in such case was the highest value, as it stood at the time of trial; and this appears to be the rule held by 1d. Elsenberry in the case of Payne vs. Burke, decided in 1779, and cited by Mr. Rogers in the case of McDonnell ad vs. Seaford, 11th Penn. R. p. 318, and these rules clearly stated.

In the case of Shepherd's Ex't vs. Johnson, 2d East 211, (1 East, 430, 2d And. Ed., by Wharton,) in a case of breach of engagement to deliver stock—Grose J. said: "The true measure of damages in all these cases is, that which will completely indemnify the plaintiff for the breach of the engagement. The proof in this case showed that at the time of trial, the stock was greatly enhanced in value, and it was held that indemnity in such case was the highest value, as it stood at the time of trial, and this appears to be the rule of compensation."

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The rule of compensation is the rule of the law, and the law is the rule of the judge.

It is to be remarked, however, that this case seems to refer to "the highest price at any intermediate day," to rest on its peculiar facts.

Lord Mansfield, in speaking of the claim for damages says, "all his (plaintiffs) letters require nothing more than to be paid off at par. No application is made to the defendant, at the time when the reduced annuities are the highest price; the plaintiff does not say pay me now, for I can invest it advantageously and I shall call on you to pay the difference, if I do not."

He lets the time pass by and he afterwards quotes what "he could have done."

In Downes vs. Back, 1 Stark, case p. 318—Lambeth allowed the value on the day when the stock was sold.

But the price of the stock on the day when it ought to have been replaced, or the price at the day of trial, at the option of plaintiff.

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